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In this chapter. . .

This chapter discusses the requirements for reviewing a court’s initial dispositional order and compliance with the Case Service Plan. When a child has not been removed from his or her home, or when a child has been returned to his or her home following an initial removal, the court must conduct periodic review hearings to determine the family’s progress toward rectifying conditions that brought the child within the court’s jurisdiction.

Dispositional review *hearings* must be conducted within certain time requirements when the child has been placed in foster care. The two main objectives of a dispositional review hearing are set forth in MCR 3.975(A):

“(A) *Dispositional Review Hearings.* A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.”

This chapter also outlines procedures for removing a child from his or her home in an emergency that arises during the dispositional phase of proceedings.

16.1 Time Requirements for Review Hearings

Court rule requirements. MCR 3.975(C) states as follows:

“(C) *Time.* The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) no later than every 91 days following entry of the original order of disposition; or

(2) no later than every 182 days after the first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 3.976(E)(3).”

*These requirements are effective December 28, 2004. 2004 PA 473, 476–477.

Statutory requirements.* If a child has been placed outside of his or her home, a court must conduct a variety of review hearings, including dispositional review hearings. The statutes providing for post-disposition review hearings require the court to conduct such hearings at the following intervals:

- Except as explained in the third bullet, below, a review hearing must be held not more than 182 days after the child’s removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding hearing until the case is dismissed. A review hearing shall not be cancelled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3).
- A permanency planning hearing must be conducted within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. A permanency planning hearing shall not be canceled or delayed beyond the number of months required by MCL 712A.19a(1) or days required under MCL 712A.19a(2),* regardless of whether there is a petition for termination of parental rights or any other matter pending. MCL 712A.19a(1) and MCL 712A.19c(1).
- If a child is under the care and supervision of an agency and is in a permanent foster family agreement* or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 182 days after the child has been removed from his or her home and not later than 182 days after that as long as the child is subject to the jurisdiction of the court, the Michigan Children’s Institute, or other agency. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(4).

*MCL 712A.19a(2) requires a permanency planning hearing to be held within 30 days after a judicial determination that reasonable efforts at reunification are not required.

*See Section 13.9(C) for a list of the required parties to a permanent foster family agreement.

- Unless a child is under the care and supervision of an agency and is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 91 days following termination of parental rights to the child and no later than every 91 days thereafter for the first year following termination of parental rights to that child. If a child remains in a placement for more than one year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and not later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether any other matters are pending. MCL 712A.19c(1).*

*See Chapter
19.

If a child remains in his or her home, the court must conduct review hearings. MCL 712A.19(2) states in part:

“Except as provided in subsections (3) and (4),* if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending.”

*See above for
information on
subsections (3)
and (4).

Accelerated review hearings. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next review hearing before it is required. MCR 3.975(D) states:

“(D) *Early Review Option.* At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between

review hearings, the court shall, among other factors, consider:

(1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.”

See also MCL 712A.19(3)–(4) and (9)(a)–(b), which contain substantially similar requirements.

*See Section 5.8 for requirements for waiver of notice of hearing.

Waiver of review hearing and return of child home. If the requisite seven days’ notice prior to a review hearing was given to all parties, or if proper notice of hearing is waived,* and if no party requests a hearing within the seven days, the court may issue an order without holding a review hearing permitting the agency to return the child home. MCR 3.975(H) states as follows:

“(H) *Returning Child Home Without Dispositional Review Hearing.* Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.”

See also MCL 712A.19(10), which contains substantially similar requirements.

*See Chapter 17 for a complete discussion of permanency planning hearings. See Section 5.4 for notice requirements.

Combined permanency planning hearing and review hearing. If proper notice for a permanency planning hearing is provided, then the permanency planning hearing may be combined with a review hearing, but this must occur no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under MCL 712A.19a(2).*

Federal law requirements. Federal regulations implementing the Adoption & Safe Families Act require that reviews of a child’s status by a court or administrative agency occur at least every six months. 45 CFR 1355.34(c)(2)(ii). The six-month period begins when the child enters foster care. A child enters foster care the earlier of the date that the court found the child to be abused or neglected or 60 days after the child’s removal from his or her home. 45 CFR 1355.20(a).

16.2 Required Procedures and Rules of Evidence at Dispositional Review Hearings

MCR 3.975(E) sets forth the required procedures and rules of evidence for dispositional review hearings. Those procedures and rules of evidence are the same as required for initial disposition hearings. See Section 13.5. MCR 3.975(E) states as follows:

“(E) *Procedure.* Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child’s parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.”

See also MCL 712A.19(11), which contains substantially similar requirements.

Reasonable efforts. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, the agency must report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home. MCR 3.973(F)(3) and MCL 712A.18f(1).

Accelerated review of elements of Case Service Plan. Upon motion by any party or by the court in its own discretion, a review hearing may be accelerated to review any element of the Case Service Plan. MCL 712A.19(3) and (4).

16.3 Required Review of Progress Toward Compliance With the Case Service Plan

MCL 712A.19(6) sets forth the criteria for evaluating progress with compliance with the Case Service Plan:

“(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the

child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

“(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care.”

MCR 3.975(F) states:

“(F) Criteria.

“(1) *Review of Case Service Plan.* The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

(c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;

(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;

(e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and

(f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

“(2) *Progress Toward Returning Child Home.* The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.”

16.4 Modification of the Case Service Plan

The court may modify any part of the Case Service Plan, including, but not limited to, prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care, and prescribing additional actions to be taken by the parent, guardian, “nonparent adult,” or custodian to rectify such conditions. MCL 712A.19(7)(a)–(b).

16.5 Amended or Supplemental Orders of Disposition

Subject to MCL 712A.20, if the child is under the jurisdiction of the court, the court may terminate the cause or amend or supplement a dispositional order pursuant to MCL 712A.18* at any time the court considers necessary and proper. MCL 712A.19(1).

MCL 712A.20, on the other hand, provides that if the child is placed in the temporary custody of the court, the court may not enter a supplemental order of disposition providing for permanent custody of the child except pursuant to issuance of summons or notice. The notice and other procedural requirements must be observed prior to a hearing at which the court will consider termination of parental rights.*

*See Section 13.9 for a discussion of dispositional options available to the court.

*See Chapter 18 for a detailed discussion of hearings on termination of parental rights.

At a dispositional review hearing, the court must determine the continuing necessity and appropriateness of the child's placement. The court has several options following a dispositional review hearing. The court may:

- order the return of the child home;
- modify any part of the Case Service Plan;
- modify the dispositional order;
- enter a new dispositional order; or
- continue the prior dispositional order.

MCR 3.975(G) and MCL 712A.19(7)(a)–(b) and (8).

16.6 Records of Dispositional Review Hearings

MCR 3.925(B) states that “[a] record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108.” MCR 3.903(A)(10) defines “formal calendar” as judicial proceedings other than a preliminary inquiry or a preliminary hearing. Thus, a record of a review hearing must be made.

16.7 Review Hearings for Children at Home

MCL 712A.19(2) requires a court to conduct a review hearing when a child remains in his or her home.* That statute states:

“Except as provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element

*Effective December 28, 2004, 2004 PA 477 amended §19(2) to require the court to conduct a review *hearing* rather than a progress review when a child remains at home.

of the case service plan prepared according to section 18f of this chapter.”

MCR 3.974(A) states as follows:

“(A) Review of Child’s Progress.

“(1) *General.* The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. A progress review does not require a hearing.

“(2) *Time.* The progress of the child must be reviewed no later than 182 days after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care.”

16.8 Requirements to Order a Change in Placement When a Child Is at Home

The court may not order a change in the child’s placement solely on the basis of a progress review; the court must hold a hearing to change the child’s placement. MCR 3.974(A)(3) states:

“(3) *Change of Placement.* Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).”

In *In re EP*, 234 Mich App 582 (1999), overruled on other grounds 462 Mich 341 (2000), respondent-mother appealed the trial court’s supplemental dispositional order removing the child from respondent’s home, where the child had been staying on an “extended home visit.” At a pretrial hearing, the child was returned home from foster care for an “extended visit” on condition that respondent find suitable housing and comply with the Case Service Plan. Respondent failed to meet these conditions, and the child was returned to foster care. After respondent admitted the allegations in the petition, the court took jurisdiction, continued the child’s foster care placement, but again ordered “extended visitation”

and returned the child home. Prior to an accelerated dispositional review hearing, respondent filed a motion seeking a temporary restraining order barring the petitioner from removing the child from her home. Following the hearing, the trial court entered an order removing the child from respondent's custody. *Id.* at 585-89.

The Court of Appeals held that the trial court did not err in terminating the "extended visitation" provision without a hearing. A hearing was required under former MCR 5.973(E)(1), but the accelerated dispositional review hearing satisfied this requirement. Moreover, the trial court did not err in concluding that the child was at risk and terminating the "extended visitation." The trial court did not base its conclusion on speculation about the effect of respondent's emotional difficulties on the child but properly focused on respondent's noncompliance with the Case Service Plan.

A person with custody of a child pursuant to court order may not invoke the constitutional privilege against self-incrimination to conceal the child's whereabouts or refuse to surrender the child. *Baltimore City Dep't of Social Services v Bouknight*, 493 US 549, 561 (1990).

16.9 Emergency Removal of a Child Placed at Home

MCR 3.974(B) sets forth the procedures required for emergency removal of a child from his or her home following the initial disposition hearing. That rule states in relevant part:

"(B) Emergency Removal.

"(1) *General.* If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.

* * *

"(3) *Emergency Removal Hearing.* If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2)* are satisfied.

*See Section 8.1(B) for these criteria.

(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:

(i) to be represented by an attorney at the dispositional review hearing;

(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and

(iii) to use compulsory process to obtain witnesses for the dispositional review hearing.

(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.”

MCR 3.974(C) states that the procedures for the dispositional review hearing following an emergency removal are the same as for disposition hearings. MCR 3.974(C) states as follows:

“(C) *Dispositional Review Hearing; Procedure.* If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.”*

*See Section 13.5.

